

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF GEORGIA

JAN 20 AM 9:49

DUBLIN DIVISION

CLERK L. J. Gibson
SO. DIST. OF GA.

AZIZI KHALID MOHAMMAD,)	
)	
Plaintiff,)	
v.)	CV 305-156
)	
MCRAE CORRECTIONAL FACILITY)	
et al.,)	
)	
Defendants.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff has filed a complaint alleging violations of 28 U.S.C. § 1331 and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). He is proceeding pro se and requested permission to proceed *in forma pauperis*. On December 2, 2005, the Court directed plaintiff to return his Prisoner Trust Fund Account Statement and Consent to Collection of Fees forms within thirty (30) days and advised plaintiff that all prisoners, even those proceeding *in forma pauperis*, must pay the filing fee of \$250.00 in full. 28 U.S.C. § 1915(b)(1). The Court cautioned plaintiff that failure to respond would be an election to have this case voluntarily dismissed without prejudice. Plaintiff failed to respond.

Because the test for determining the appropriateness of dismissal is whether there is "a clear record of delay or willful contempt and a finding that lesser sanctions would not suffice," Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985), on January 5, 2006, the Court granted plaintiff ten (10) additional days to comply with the terms of the Court's

December 2, 2005, Order. Once again, plaintiff was warned that his failure to comply in a timely fashion with the Court's Order would result in a recommendation that his case be dismissed.

The time to respond has passed, and plaintiff has submitted neither a Trust Fund Account Statement nor a Consent to Collection of Fees form. Because plaintiff has not paid the filing fee or consented to the collection of the filing fee in installments, the Court finds that the imposition of monetary sanctions is not a feasible sanction. Therefore, pursuant to Local Rule 41.1(b) & (c), the Court **REPORTS** and **RECOMMENDS** that this case be **DISMISSED** without prejudice.

SO REPORTED and RECOMMENDED this 20th day of January, 2006, at Augusta, Georgia.


W. LEON BARFIELD
UNITED STATES MAGISTRATE JUDGE